

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16187 of 2006

Dated:03-08-2006

Between:

M/s.Anglo Indian & Domiciled, European Anglican Community of Chaderghat of St. George's Church and Schools, represented by its Chairman, Sri W.Floate, having its office H.No.5.9.163,Chapal Road, Hyderabad.

Petitioner

And

The Municipal Corporation of Hyderabad, rep. by its Commissioner, and others

Respondents

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No.16187 of 2006

ORDER:

1. Rule Nisi. Sri Ganta Rama Rao takes notice. Heard the counsel.

2. The writ petition is filed for a writ of Mandamus declaring the action of the 4th respondent in issuing memos bearing Nos. N1/B5/9681/2004 dated 3.10.2005, dated 2.11.2005 and N1/B5/9681/2004 dated 22.3.2006 and the rejection of the building application dated 28.1.2006 by the first respondent vide memo bearing No.59/CSC/TP6/2006/1530 dated 19.6.2006 is arbitrary, highhanded, without jurisdiction and violative of Article 14 of Constitution of India and consequently to set-aside the same and direct the first respondent and second respondent to process the application of the petitioner dated 28.1.2006 strictly in accordance with the building regulations in force and without insisting for 'No Objection Certificate' from the Collector, Hyderabad and any other revenue authority and pass such other suitable orders.

3. It is stated that the petitioner is a society which was duly registered with the Registrar of Joint Stock Company, H.E.H.Nizam's Government vide certificate bearing No.8/Aban of 1356 Fasli, which roughly corresponds to the year 1949 under the Societies Registration Act, 1351 Fasli. The petitioner is the owner of land at Chappal Road, Hyderabad. Originally the Young Men's Christian Association of Chappal Road, Hyderabad, had purchased 1001 square yards of land on 5.8.1896 by way of a registered sale deed, registered in the office of the Registrar, Secunderabad at Serial No.1746. Subsequently, the said Young Men's Christian Association had gifted this 1001 square yards of land to the petitioner herein by way of a deed of gift executed on 24.11.1962 and registered as document No.3065/1962 in the office of the District Registrar, Hyderabad. Prior to the gift, Young Men's Christian Association had also constructed building over the land and the said building was allotted house No.5.9.163 by the Municipal Corporation of Hyderabad. Thereafter, the petitioner herein remained absolute owner and possessor of the land. As the land had become valuable and the petitioner society would be able to generate more

income by developing the land, the petitioner society had approached the Municipal Corporation of Hyderabad for permission for construction of a building on 556 square yards of land in the year 2004. At that stage, the Municipal Corporation of Hyderabad had required the petitioner to obtain a 'No Objection Certificate' from the office of the Collector, Hyderabad District, even though such a certificate is not required. However, it is stated that due to ignorance of law, the petitioner had approached the office of the Collector of Hyderabad District for issue of N.O.C. and the Collector, Hyderabad had by office endorsement No. N1/B5/9681/2004 dated 3.10.2005 had endorsed that the land was not government land. This was followed with an additional endorsement dated 2.11.2005. In this Additional endorsement, the Joint Collector, acting on behalf of the Collector, Hyderabad District, had stipulated with the No Objection Certificate should be taken as being only for the purpose of construction of school building for educational purpose and not for commercial purpose. It is also stated that as the earlier application for construction had elapsed, the petitioner had moved another building application dated 28.1.2006. In relation to this application, the Joint Collector, acting on behalf of the Collector, Hyderabad District, again issued a letter bearing No.N1/B5/9681/2004 dated 22.3.2006 stipulating that the petitioner should be permitted to construct only for educational purpose as there were lot of schools in the area and the academic environment of this place would be affected if the residential or commercial complexes are constructed. On the basis of this memo issued by the Collector, the first respondent had rejected the building application of the petitioner for construction of residential apartment on the ground that the 'No Objection Certificate' issued by the Joint Collector, Hyderabad permitted only construction of building for the educational purposes only, vide its letter No.59/CSC/TP6/2006/1530 dated 19.6.2006. It is stated that the said action of the respondents cannot be sustained for the reason that there is no necessity under law to obtain such

certificate at all but due to ignorance, the petitioner had invited this problem by approaching the concerned District Collector and invited such endorsement from the concerned Joint Collector. It is needless to say that either under the provisions of the Hyderabad Municipal Corporation Act or the Building bye laws governing the field, it is now well settled that such No Objection Certificate from the revenue authorities is not required. When that being so, merely because of ignorance, the petitioner had approached and invited certain adverse orders stipulating certain conditions that cannot be taken as a ground to reject the application. Hence, the action of the respondents 1 to 3 in making such rejection order on such ground cannot be sustained especially in view of the fact that there is no such requirement of obtaining any No Objection Certificate whatsoever from the District Collector.

4. In view of the same, the writ petition is bound to succeed and accordingly, the writ petition is hereby allowed directing the respondents 1 to 3 to process the application of the petitioner dated 28.1.2006 in accordance with Building Regulations in force without insisting any No Objection Certificate whatsoever from the District Collector, Hyderabad or any other revenue authority and pass suitable orders within a period of six weeks from the date of receipt of a copy of this order.

03-08-2006

Stp